

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

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| IN THE MATTER OF: Deere & Company dba John Deere Foundry Waterloo Black Hawk County, Iowa | ADMINISTRATIVE CONSENT ORDER NO. 2012-AQ- 23 |
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TO: Josh Wittenburg
John Deere Foundry Waterloo
Manager Foundry Operations
2000 Westfield Avenue
Waterloo, IA 50707

Lisa McCraw, Law Department
Deere & Company
One John Deere Place
Moline, IL 61265-8098

CT Corporation, Registered Agent
Deere & Company
500 East Court Avenue
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Deere & Company dba John Deere Foundry Waterloo (John Deere) for the purpose of resolving air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Dennis Thielen
Iowa Department of Natural Resources
Air Quality Bureau
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-281-4899

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-281-8563

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Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. John Deere has a facility located at 2000 Westfield Ave, Waterloo, Iowa. This facility manufactures farm machinery and equipment. Some of the air contaminant sources at this facility include foundry sand processing, bag houses, boilers, casting shakeout, core ovens, induction furnaces, paint booths, and metal plating process equipment.

2. On October 4, 2011, John Deere was issued Air Quality Construction Permits #11-A-437-S1, #11-A-438-S1, and #11-A-598 through #11-A-605 for a new casting line. John Deere requested emission limits for particulate matter (PM), particulate matter with a diameter of 10 micrometers or less (PM₁₀), and fine particulate (PM_{2.5}) to avoid Prevention of Significant Deterioration (PSD) review. John Deere stated that the volatile organic compounds (VOC) emissions were already accounted for in air quality construction permits for the mold and core making processes (Air Quality Construction Permits #95-A-002-S2 and #95-A-005-S2).

3. On November 2, 2011, John Deere discovered an error in how VOC and Carbon Monoxide (CO) emissions had been calculated for the foundry. The new calculated emissions were 672 tons per year of VOC and 1,424 tons per year of CO, levels which should have undergone PSD review.

4. On November 10, 2011, John Deere informed the DNR of the error and requested a PSD pre-application meeting.

5. On November 28, 2011, John Deere began construction on the new casting line.

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6. On December 16, 2011, John Deere staff attended a PSD pre-application meeting.
7. On December 23, 2011, John Deere submitted an incomplete PSD application. On December 28, 2011, DNR staff requested additional information needed to complete the application. The requested information was received in a timely manner.
8. On January 19, 2012, DNR staff visited the John Deere facility and observed construction of the new casting line.
9. On March 19, 2012, DNR issued a Notice of Violation to John Deere for PSD violations relating to the unpermitted construction of the new casting line.
10. On July 24, 2012, DNR issued the construction permits for the new casting line.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.
2. Pursuant to Iowa Code sections 455B.133 and 455B.134(3)(a), 567 IAC 22.1(1) requires that a person who constructs, installs, or reconstructs or alters equipment or control equipment must first obtain an air quality construction permit from the DNR, unless an exemption applies.
3. 567 IAC 33.3(2)"b" states no new major stationary source or major modification to which the PSD requirements apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements. Further, 567 IAC 33.3(18) states any owner or operator of a source or modification subject to the provisions in 567 IAC 33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action. John Deere began construction on the new casting line prior to obtaining a PSD permit. The above-mentioned facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders and John Deere agrees to the following:

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1. John Deere shall pay a penalty of \$10,000.00 to the DNR within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$10,000.00 administrative penalty. The administrative penalty assessed by this consent order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” By failing to obtain a PSD construction permit prior to the change in operation, John Deere saved time and money on the initial cost of a PSD construction permit application. John Deere also gained a potential competitive advantage by not submitted a timely PSD application. This competitive advantage may result in John Deere realizing cash flow months in advance. It is estimated that John Deere has received an economic benefit of at least \$4,000.00 and that amount is assessed for this factor.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The basic goals of the PSD regulations are to: 1) ensure that economic development growth will occur in harmony with the preservation of existing clean air resources to prevent the development of any new nonattainment problems; 2) to protect the public health and welfare from any adverse effect which might occur even at air pollution levels better than the national ambient air quality standards (NAAQS); and 3) to preserve, protect, and enhance the air quality in areas of special natural recreational, scenic, or historic value, such as national parks and

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wilderness areas. The primary provisions of the PSD regulations require that new major stationary sources and major modifications be carefully reviewed prior to construction to ensure compliance with the NAAQS, the applicable PSD air quality increments, and the requirement to apply Best Available Control Technology (BACT) on the project's emissions of air pollutants. John Deere's failure to obtain a PSD permit prior to construction prevented the DNR from evaluating the potential emissions and ambient air impacts from the change in operation. By not being able to review the project before construction, the DNR was inhibited in determining if this source will meet all applicable emission limits and operating requirements for PSD. According to information provided by John Deere, an increase in VOC emissions of 672 tons and CO emissions of 1424 tons will occur. Based on the above-mentioned facts, \$3,000.00 is assessed for this factor.

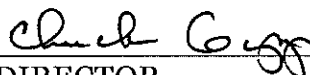
Culpability – John Deere has been out of compliance since it began construction of the new casting line and remains out of compliance until PSD permits are issued. John Deere informed DNR of the error in the calculation of VOC and CO emissions and that a PSD permit was required. John Deere promptly submitted a PSD permit application. Based on the above-mentioned facts, \$3,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of John Deere. For that reason, John Deere waives its rights to appeal this order or any part thereof.

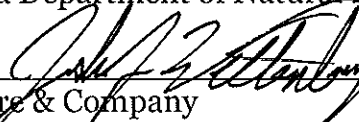
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Chuck Gipp, DIRECTOR
Iowa Department of Natural Resources

Dated this 31st day of
July, 2012.



Deere & Company

Dated this 24 day of
July, 2012.

Facility No. 07-01-010; Kelli Book; Dennis Thielen; VII.A.2